

Exhibit

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FEDERAL AGRICULTURAL)
MORTGAGE CORP.,)

Plaintiff(s),)

v.)

IT'S A JUNGLE OUT THERE ,)
INC dba VINTAGE CAPITAL,)
et al.,)

Defendant(s).)

No. C 03-3721 VRW (BZ)

FINAL JURY INSTRUCTIONS

AND RELATED THIRD-PARTY)
CLAIM.)

Attached are the court's final jury instructions.

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult if you find it necessary.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which the lawyers have agreed or stipulated.

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, will say in their closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

(2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

(3) Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered.

(4) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. For example, the witness testifies, "I saw Joe break the glass." Circumstantial evidence is proof of one or more facts from which you could find another fact. For example, the witness testifies, "I saw Joe holding the glass before I left the room. No one else was in the room. When I returned, the broken glass was lying at Joe's feet." You could find that Joe had broken the glass in either example. You must consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness' memory;
- (3) the witness' manner while testifying;
- (4) the witness' interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness' testimony;
- (6) the reasonableness of the witness' testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

Certain charts and summaries that have not been received in evidence have been shown to you in order to help explain the contents of books, records, documents, or other evidence in the case. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

You should decide the case as to each party separately. Unless otherwise stated, the instructions apply to all parties.

You have heard evidence that one or more witnesses may have testified inconsistently under oath on prior occasions. You may consider this evidence, along with other pertinent evidence, in deciding whether or not to believe such a witness and how much weight to give to the testimony of that witness.

Plaintiff Farmer Mac asserts claims for breach of contract and express indemnity against Vintage Capital and claims for fraud and negligent misrepresentation against all defendants. Except where I instruct you that elements of a claim have already been established, Plaintiff has the burden of proving each element of each claim by a preponderance of the evidence.

Defendants as Third Party Plaintiffs each assert a claim against Zions First National Bank for equitable indemnity on Farmer Mac's claim for negligent misrepresentation. Each Third Party Plaintiff has the burden of proving each element of such a claim by a preponderance of the evidence.

When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true.

When a party has the burden of proof on any claim by clear and convincing evidence, it means you must be persuaded by the evidence that it is highly probable that the claim is true. The clear and convincing evidence standard is a heavier burden than the preponderance of the evidence standard.

In either case, you should base your decision on all of the evidence, regardless of which party presented it.

On any claim, if you find that each of the elements on which the plaintiff has the burden of proof has been proved, your verdict should be for the plaintiff on that claim, unless you also find that a defendant has proved an affirmative defense, in which event your verdict should be for that defendant on that claim.

All parties are equal before the law. A corporation or an association is entitled to the same fair and conscientious consideration by you as any party.

Under the law, a corporation is considered to be a person. It can only act through its employees, agents, directors, or officers. Therefore, a corporation is responsible for the acts of its employees, agents, directors, and officers performed within the scope of authority.

An agent is a person who performs services for another person under an express or implied agreement and who is subject to the other's control or right to control the manner and means of performing the services. The other person is called a principal.

An agent is acting within the scope of authority if the agent is engaged in the performance of duties which were expressly or impliedly assigned to the agent by the principal.

Any act or omission of an agent within the scope of authority is the act or omission of the principal.

In this case, it has been established that Farmer Mac and Vintage Capital entered into a Seller/Servicing Agreement whereby Vintage Capital would act as a seller/servicer in connection with Farmer Mac loans.

Farmer Mac claims that Vintage Capital breached this contract by failing to comply with its obligations under the Seller/Servicing Agreement and its accompanying Seller/Servicer Guide.

Prior to trial, Plaintiff established that Vintage Capital breached the parties' contract, including the representations and warranties contained in the Seller/Servicer Agreement and Guide, as follows:

(a) it failed to explain to Farmer Mac in writing prior to the close of escrow, the omission of a tax liability from Jarnail Singh's financial statement;

(b) it omitted from Jarnail Singh's financial statement the pending lawsuit entitled *Herrera v. Singh*;

(c) it failed to ensure that certain mobile homes that were part of Farmer Mac's collateral were adequately secured by a first deed of trust;

(d) it incorrectly represented to Farmer Mac that security interests in the mobile homes were unnecessary.

While these breaches of contract have already been established, plaintiff claims that Vintage Capital breached the contract in other ways.

Farmer Mac also claims that Vintage Capital's breaches of this contract caused harm to Farmer Mac for which Vintage Capital should pay.

To recover damages for breach of contract from Vintage Capital, Farmer Mac must prove all of the following:

1. That Farmer Mac did all, or substantially all of the significant things that the contract required it to do; or that Farmer Mac was excused from having to do those things;
2. That all conditions required for Vintage Capital's performance had occurred;
3. That Vintage Capital failed to do something that the contract required it to do; and
4. That Farmer Mac was harmed by that failure.

In deciding what the terms of a contract mean, you must decide what the parties intended at the time the contract was created. You may consider the usual and ordinary meaning of the language used in the contract as well as the circumstances surrounding the making of the contract.

The following instructions may also help you interpret the terms of the contract:

You should assume that the parties intended the words in their contract to have their usual and ordinary meaning unless you decide that the parties intended the words to have a special meaning.

In deciding what the words of a contract meant to the parties, you should consider the whole contract, not just isolated parts. You should use each part to help you interpret the others, so that all the parts make sense when taken together.

In deciding what the words in a contract meant to the parties, you may consider how the parties acted after the contract was created but before any disagreement between the parties arose.

A warranty is an assurance by one party to a contract of the existence of a representation or fact upon which the other party may rely. It amounts to a promise by the party giving the assurance to indemnify the party receiving the representation or fact for any loss if the fact warranted proves untrue or turns out to be not as represented. A party relying upon a representation and warranty has no duty or obligation to undertake any investigation to ascertain the truth of the representation, unless that party has reason to believe the representation or fact is not true at the time of reliance.

You must decide how much money, if any, will reasonably compensate Farmer Mac for the harm caused by the breaches of contract that have been established and by any additional breaches Farmer Mac has proved. This compensation is called "damages." The purpose of such damages is to put Farmer Mac in as good a position as it would have been if Vintage Capital had performed as promised.

To recover damages for any harm, Farmer Mac must prove:

- (1) That the harm was likely to arise in the ordinary course of events from the breach of the contract; or
- (2) That when the contract was made, both parties could have reasonably foreseen the harm as the probable result of the breach.

Farmer Mac also must prove the amount of its damage according to the following instructions. It does not have to prove the exact amount of damages. You must not speculate or guess in awarding damages.

Farmer Mac claims damages arising out of the default of the Ram Investment loan and seeks recovery of all costs, expenses and harm Farmer Mac incurred as a result of Vintage Capital's breach of the

Seller/Service Agreement and all damages incidental to Vintage Capital's refusal to repurchase the Ram loan.

You must not include in your award of damages on any claim other than fraud, any damages to punish or make an example of the Defendants. Such damages would be punitive damages, and they cannot be a part of your verdict.

You must award only the damages that fairly compensate Farmer Mac for its loss.

If Vintage Capital breached the contract and the breach caused harm, Farmer Mac is not entitled to recover damages for harm that Vintage Capital proves Farmer Mac could have avoided with reasonable efforts or expenditures. You should consider the reasonableness of Farmer Mac's efforts in light of the circumstances facing it at the time, including its ability to make the efforts or expenditures without undue risk or hardship.

If Farmer Mac made reasonable efforts to avoid harm, then your award should include reasonable amounts that it spent for this purpose.

Farmer Mac has made contract claims against Vintage Capital for breach of contract and for express indemnity, and tort claims against all defendants for fraud and for negligent misrepresentation. If you decide that Farmer Mac has proved both types of claims, the same damages that resulted from both types of claims can be awarded only once. In completing the verdict, please award the total amount of damages, if any, you conclude plaintiff has proven on each claim; the Court will make any appropriate offsets at the time judgment is entered to eliminate any duplicate recovery.

Farmer Mac also seeks to recover from Vintage Capital on its claim for express indemnity. In this regard, Farmer Mac claims that Vintage Capital is required to indemnify Farmer Mac pursuant to section 503.3 of the Seller/Service Guide which provides in pertinent part that:

The Seller shall indemnify Farmer Mac and its directors, officers and other employees and hold each of them harmless against any and all losses, claims, damages, judgments, penalties, fines and legal costs and expenses, including reasonable attorney's fees, that they may sustain as a result of or arising out of any event of default, including but not limited to those that are in any reasonable way related to the actual or alleged failure of the Seller to perform its duties and service the Qualified Loans in strict compliance with the terms of its Seller/Service Agreement and the Guide. The obligations of the Seller under this Subsection shall survive delivery and payment for the Qualified

Loans and termination of the Seller's relationship
with Farmer Mac.

Vintage Capital denies that it is required to indemnify Farmer Mac.

To recover damages for breach of express indemnity from Vintage Capital, Farmer Mac must prove all of the following:

1. That Farmer Mac did all, or substantially all, of the significant things that the contract required it to do;
2. That all conditions required for Vintage Capital's performance had occurred;
3. That Vintage Capital failed to do something that the contract required it to do; and
4. That Farmer Mac sustained damages as a result of an event of default under the terms of the Seller/ Servicer Agreement and the Guide.

Farmer Mac claims that defendants made a false representation that harmed it. To establish this claim against any defendant, Farmer Mac must prove all of the following:

1. That that defendant represented to Farmer Mac that an important fact was true;
2. That the representation was false;
3. That that defendant knew that the representation was false when it made it, or made the representation recklessly and without regard for its truth;
4. That that defendant intended that Farmer Mac rely on the representation;
5. That Farmer Mac reasonably relied on defendant's representation;
6. That Farmer Mac was harmed; and
7. That Farmer Mac's reliance on that defendant's representation was a substantial factor in causing it harm.

Farmer Mac claims that it was harmed because Defendants concealed certain information. To establish this claim against any defendant, Farmer Mac must prove all of the following:

1. That that Defendant actively concealed an important fact from Farmer Mac;
2. That Farmer Mac did not know of the concealed fact;
3. That that Defendant intended to deceive Farmer Mac by concealing the fact;
4. That Farmer Mac reasonably relied on that Defendant's deception;
5. That Farmer Mac was harmed; and
6. That that Defendant's concealment was a substantial factor in causing Farmer Mac harm.

Ordinarily, an opinion is not considered a representation of fact. An opinion is a person's belief that a fact exists, a statement regarding a future event, or a judgment about quality, value, authenticity, or similar matters. However, a Defendant's opinion is considered a representation of fact if Farmer Mac proves that that Defendant claimed to have special knowledge about the subject matter that Farmer Mac did not have.

A fact is important if it would influence a reasonable person's judgment or conduct. A fact is also important if the person who represents it knows that the person to whom the representation is made is likely to be influenced by it even if a reasonable person would not.

Farmer Mac relied on a Defendant's misrepresentation and/or concealment if it caused Farmer Mac to purchase the RAM Loan, and if Farmer Mac would probably not have done so without such misrepresentation and/or concealment.

It is not necessary for a misrepresentation and/or concealment to be the only reason for Farmer Mac's conduct. It is enough if a misrepresentation and/or concealment substantially influenced Farmer Mac's choice, even if it was not the only reason for its conduct.

You must determine the reasonableness of Farmer Mac's reliance by taking into account its mental capacity, knowledge, and experience.

Farmer Mac claims it was harmed because Defendants and/or their agents negligently misrepresented an important fact. To establish this claim, Farmer Mac must prove all of the following:

1. That Defendants and/or their agents represented to Farmer Mac that an important fact was true;
2. That Defendants and/or their agent's representation was not true;
3. That Defendants and/or their agents had no reasonable grounds for believing the representation was true when it was made;
4. That Defendants and/or their agents intended that Farmer Mac rely on this representation;
5. That Farmer Mac reasonably relied on Defendants and/or their agent's representation;
6. That Farmer Mac was harmed; and
7. That Farmer Mac's reliance on Defendants and/or their agent's representation was a substantial factor in causing its harm.

If you decide that Farmer Mac has proved its fraud or its negligent misrepresentation claim against defendants, you also must decide how much money, if any, will reasonably compensate Farmer Mac for the harm. This compensation is called "damages."

The amount of damages must include an award for all harm that defendants were a substantial factor in causing, even if the particular harm could not have been anticipated.

Farmer Mac must prove the amount of its damages. However, Farmer Mac does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. You must not speculate or guess in awarding damages.

To decide the amount of damages you must determine the fair market value of what Farmer Mac gave and subtract from that amount the fair market value of what it received.

Farmer Mac may also recover amounts that it reasonably spent in reliance on defendants' false or negligent representation and failure to disclose if those amounts would not otherwise have been spent.

In connection with Plaintiff's claim for fraud only, you may in your discretion award the Plaintiff prejudgment interest. Should you decide to award prejudgment interest, the interest will be calculated by the Court.

If you decide that Robert Hower and/or Ami Hower's or Vintage Capital's fraudulent misrepresentation or concealment caused Farmer Mac harm, you must decide whether that conduct justifies an award of punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

You may award punitive damages against Robert Hower only if Farmer Mac proves by clear and convincing evidence that he engaged in that conduct with malice or fraud.

You may award punitive damages against Ami Hower only if Farmer Mac proves by clear and convincing evidence that she engaged in that conduct with malice or fraud.

You may award punitive damages against Vintage Capital only if Farmer Mac proves that Vintage Capital acted with malice or fraud. To do this, Farmer Mac must prove one of the following by clear and convincing evidence:

1. That the malice or fraud was the conduct of one or more officers, directors, or managing agents of Vintage Capital, who acted on behalf of Vintage Capital; or

2. That the conduct constituting malice or fraud was authorized by one or more officers, directors, or managing agents of Vintage Capital; or

3. That one or more officers, directors, or managing agents of Vintage Capital knew of the conduct constituting malice or fraud and adopted or approved that conduct after it occurred.

“Malice” means that a defendant acted with intent to cause injury.

“Fraud” means that a defendant intentionally misrepresented or concealed a material fact and did so intending to harm Farmer Mac.

An employee is a “managing agent” if he or she exercises substantial independent authority and judgment in his or her corporate decision making such that his or her decisions ultimately determine corporate policy.

There is no fixed standard for determining the amount of punitive damages, and you are not required to award any punitive damages. If you decide to award punitive damages, you should consider all of the following separately for each defendant in determining the amount:

(a) How reprehensible was that defendant’s conduct?

(b) Is there a reasonable relationship between the amount of punitive damages and Farmer Mac’s harm?

(c) In view of that defendant's financial condition, what amount is necessary to punish it, him or her and discourage future wrongful conduct? You may not increase the punitive award above an amount that is otherwise appropriate merely because a defendant has substantial financial resources. Any award you impose may not exceed that defendant's ability to pay.

An agent has a duty to exercise ordinary care to communicate to the principal knowledge acquired in the course of the agency with respect to material facts which might affect the principal's decision in concerning a pending transaction entrusted to the agent. An agent who breaches this duty may be liable to the principal for damages caused by that breach.

In connection with the negligent misrepresentation claim, defendants claim that Zions was Farmer Mac's agent, that Zions knew of the tax liability prior to the loan closing and that it failed to disclose it to Farmer Mac. If you find that defendants have established these facts, and that Zions' failure was a substantial factor in causing Farmer Mac's damages, you must decide how much responsibility to apportion to each person who has contributed to Farmer Mac's damages by determining on a percentage basis the extent to which Zions' failure contributed to the harm.

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.

If it becomes necessary during your deliberations to communicate with me, you may send a note through Mr. Holland or Ms. Scott, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it, and advise the court that you are ready to return to the courtroom.